

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Amendment to the Commission's Rules ) WT Docket No. 96-6  
To Permit Flexible Service Offerings in )  
the Commercial Mobile Radio Services )

**COMMENTS OF GTE SERVICE CORPORATION**

GTE Service Corporation and its telephone and wireless subsidiaries ("GTE") hereby submit comments in response to the Petition for Partial Reconsideration or Clarification filed on September 30, 1996, by BellSouth Corporation ("BellSouth").<sup>1</sup> In the Petition, BellSouth notes that in amending its rules to permit commercial mobile radio service ("CMRS") providers to use their spectrum for both mobile and fixed wireless applications, the Federal Communications Commission ("FCC" or "Commission") failed to eliminate Section 22.323 of the FCC Rules dealing with incidental services.<sup>2</sup> BellSouth asks the FCC to either eliminate the rule or declare that Section 22.323 is inapplicable to CMRS licensees providing services pursuant to Section 22.901 of the FCC's Rules.<sup>3</sup>

---

<sup>1</sup> Amendment to the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, Petition for Partial Reconsideration or Clarification, filed September 30, 1997, by BellSouth Corporation (hereinafter "Petition").

<sup>2</sup> 47 C.F.R. § 22.323. This section generally authorizes Part 22 licensees to provide "incidental services" over the licensed spectrum, but imposes certain restrictions on providing such services.

<sup>3</sup> Petition at 1.

*Copy*



GTE supports BellSouth's petition to eliminate application of the incidental services rule to Part 22 cellular licensees providing services pursuant to Section 22.901 of the FCC's rules. Application of the incidental services rule to cellular providers is inconsistent with the action the Commission has taken in this docket, unnecessary, and difficult, if not impossible, with which to comply. GTE believes, however, that the rule should not be eliminated entirely. In particular, GTE is concerned that given the unique characteristics of Part 22 air-ground service, allowing licensees to provide unmonitored "incidental" services over shared air-ground frequencies could diminish carriers' ability to provide the primary licensed service.

## **I. Discussion**

### **A. Application of Section 22.323 to Cellular Providers**

In support of the Petition, BellSouth argues that the FCC noted its policies and rules were unclear as to the meaning of "ancillary," "auxiliary," and "incidental" as those terms were used in FCC rules. The FCC decided that rather than continuing to define fixed mobile services in terms of whether they are "ancillary," "auxiliary," or "incidental," it would amend its rules to allow cellular providers to provide fixed services on a co-primary basis with their mobile offerings.<sup>4</sup> BellSouth argues that application of the Section 22.323 requirements to fixed cellular services would have a chilling effect on

---

<sup>4</sup> *Id.* at 1-2, *citing* Amendment to the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996) ("*Report and Order*") at 8970, 8973.



the flexibility the FCC hoped to create by amending its rules in this proceeding to facilitate fixed wireless services.<sup>5</sup>

GTE agrees with BellSouth that retaining the incidental services rule would possibly eliminate some of the flexibility the Commission hoped to create for cellular providers in this proceeding. More importantly, however, retention of Section 22.323 is both confusing and completely at odds with the FCC's stated intentions with respect to fixed cellular services. Newly revised Section 22.901(d) provides that:

Licensees of cellular systems may use alternative cellular technologies and/or provide fixed services on a co-primary basis with their mobile offerings, including personal communications services . . . on the spectrum within their assigned channel block . . .<sup>6</sup>

Retaining Section 22.323 in conjunction with this new section, then, may lead persons to conclude either that the incidental services requirements apply notwithstanding Section 22.901(d), or that some fixed cellular applications may still fall under the definition of incidental services. Rather than allow this confusion to exist, thus creating the possibility for even more FCC proceedings to resolve the issue, the FCC should act now to remove all doubt.

Like BellSouth, GTE believes that the FCC intended to eliminate Section 22.323 insofar as it applies to cellular service. As noted above, part of the Commission's impetus for adopting new Section 22.901(d) was to eliminate the uncertainty caused by the references to "auxiliary," and "incidental" services in the Part 22 rules. In amending Section 22.901, the Commission eliminated operation of the term "auxiliary" to the

---

<sup>5</sup> Petition at 3.

<sup>6</sup> 47 C.F.R. § 22.901(d).



provision of fixed cellular services. It stands to reason, therefore, that the FCC also intended to eliminate the incidental services requirements for fixed cellular services.

BellSouth also argues that the notification requirement in Section 22.323(d) serves no practical purpose.<sup>7</sup> It contends that the FCC does not need to monitor cellular licensees provision of fixed services to ensure that licensees do not diminish their mobile service offerings. In the competitive CMRS marketplace, any diminished service or rate increase with out a countervailing benefit, it argues, will encourage subscribers to switch carriers.<sup>8</sup>

GTE agrees that requiring cellular licensee notification or FCC monitoring of how such licensees use spectrum to serve customers is not necessary. The incidental service rule may have been justified when only two cellular providers were licensed to serve each geographic area: given the limited spectrum available to meet customers mobile service needs, the notification requirement was arguably justified to ensure that mobile services were not diminished or that prices were not increased in order for a cellular licensee to provide incidental wireless services. Today, however, there is much more spectrum available to fill customers' wireless needs. In addition to cellular, the FCC has licensed six broadband personal communications service ("PCS") providers in each market. Nextel, an enhanced SMR provider, also provides nationwide CMRS, and satellite and other forms of wireless services are on the horizon. In this marketplace, the Commission need not worry about whether sufficient spectrum is being devoted to

---

<sup>7</sup> Petition at 3.

<sup>8</sup> *Id.*



mobile wireless services. Nor is there any cause for concern that cellular carriers might subsidize fixed service with higher mobile rates. The competitive marketplace will ensure that all customers' wireless needs are filled at the lowest possible price.

Last, BellSouth argues that it is difficult, if not impossible, to comply with the incidental services rule. It contends that devices are increasingly available that facilitate the use of wireless services in fixed applications without a carrier's knowledge.<sup>9</sup> GTE concurs. While GTE may learn of a customer's intended use of the wireless service through its dealings with the customer, the customer is not required to inform GTE of how it plans to use the service. As a result, GTE may not know if a customer is using cellular service purchased from GTE to provide fixed wireless services.

#### **B. Application of Section 22.323 to Air-Ground Providers**

GTE believes that the incidental services rule should be retained for application to the air-ground services. Air-ground service is different from other Part 22 services in that licensees share the four MHz of spectrum allocated for commercial air-ground service.<sup>10</sup> Because the spectrum is shared, use of the air-ground frequency by one licensee in a particular area prevents use of that same frequency by other licensees in that area. Because the spectrum block is relatively small, use of the spectrum to provide cellular or other similar broadband CMRS would quickly use up the spectrum available for air-ground service. Given this structure, then, if an air-ground service licensee were to provide "incidental" services over the available air-ground spectrum, it

---

<sup>9</sup> *Id.*

<sup>10</sup> *See, generally*, 47 C.F.R. Part 22, Subpart G.



could prevent itself and other licensees from providing air-ground services or severely diminish the number of channels available for air-ground service.

To prevent "incidental" services from hindering the ability of all air-ground service providers to provide the licensed air-ground service, the FCC must maintain the ability to monitor and control "incidental" service use of the air-ground spectrum block.

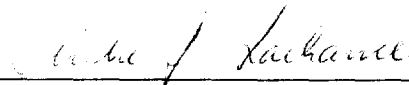
Accordingly, GTE believes that the FCC must maintain the incidental services rule for air-ground licensees.

## **II. Conclusion**

GTE supports BellSouth's Petition insofar as it asks the FCC to rule that the incidental services rule, Section 22.323 of the Commission's Rules, does not apply to cellular services provided pursuant to Section 22.901 of the Commission's Rules. GTE believes, however, that Section 22.323 must be retained for application to Part 22 air-ground service licensees.

Respectfully submitted,

GTE Service Corporation and its telephone  
and wireless companies

By   
Andre J. Lachance  
1850 M Street, N.W., Suite 1200  
Washington, DC 20036  
(202) 463-5276

November 12, 1997

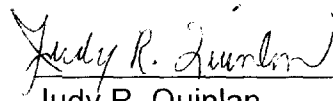
Their Attorney



### **Certificate of Service**

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on November 12, 1997 to the party listed below:

William B. Barfield  
BellSouth Corporation  
1155 West Peachtree Street  
Suite 1800  
Atlanta, GA 30309

  
\_\_\_\_\_  
Judy R. Quinlan